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EXAMINER

TRINH, SONNY

ART UNIT PAPER NUMBER

2687

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/494,198
Filing Date: January 28, 2000
Appellant(s): MITCHELL, JAMES P.

Kyle Eppele
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/08/2004

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

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Appellant's brief includes a statement that claims 1-2, 4-9, 11-14, and 16-17 of group I stand or fall together, claims 3, 10, and 15 of group II stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The prior art of record listed in the brief on page 4 (Hiatt U.S. 6,151,001) contains error.

The correct U.S. patent number is correctly listed below:

6,477,152	<i>Hiatt</i>	<i>11-2002</i>
6,314,572.	<i>LaRocca et al</i>	<i>11-2001</i>

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2, 4-9, 11-14, 16-17 are rejected under 35 U.S.C. 102(e), claims 3, 10, and 15 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 03/08/04.

Beginning of prior Office Action:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. **Claims 1-2, 4-9, 11-14, 16-17** are rejected under 35 U.S.C. 102(e) as being anticipated by Hiett ("Hiett"; Patent No. 6,477,152).

Consider **claim 1**. Hiett teaches the apparatus and method for data communications for a mobile platform (figures 3-5, 7, detailed descriptions, abstract), comprising a very low range (column 9 lines 28-31, "infrared signals") broadcast receiver located on the mobile platform (figure 5, element 506), and

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a computer network (figure 5, router 308, LAN 304 and user interface 302) including at least one terminal on the mobile platform (columns 4-5, specifically lines 22-31 of column 5), the terminal providing Internet access through the direct broadcast receiver (column 1 lines 40-57, column 2 lines 59-67).

Regarding **claim 8**, this claim includes all the limitations of claim 1 and further specifies "a distance of less than a few meters". Since Hiatt discloses that the communication between the ground wireless LAN network and the aircraft can be optical link such as infra red as mentioned above, and since infra red signals are well known and only used for short range communications, claim 8 is similarly rejected.

Regarding **claims 2 and 9**, Hiatt discloses that the Internet access is interactive access for providing commands (column 3 lines 4-15).

Regarding **claims 4 and 11**, Hiatt further discloses that the mobile platform is a boat (column 2, specifically lines 55-58).

Regarding **claims 5 and 12**, Hiatt further discloses that the mobile platform is an automobile (column 2, specifically lines 55-58).

Regarding **claims 6 and 13**, Hiatt further discloses that the mobile platform is a train (column 2, specifically lines 55-58).

Regarding **claims 7 and 14**, Hiatt further discloses that the mobile platform is an aircraft (column 2, specifically lines 55-58, figures 3-5).

Regarding **claims 16-17**, Hiatt further discloses that the commands are forwarded to an Internet service provider and the Internet service provider responds to the commands via the direct broadcast receiver (column 1 lines 40-58).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 3, 10 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiett ("Hiett"; Patent No. 6,477,152) in view of LaRocca et al. ("LaRocca"; Patent No. 6,314,572).

Regarding **claims 3 and 10**, Hiett discloses the invention including the internet connection via a satellite transmission (figures 3-5) but does not explicitly disclose that the communication system includes a back channel transmitter. In an analogous art, LaRocca teaches a method and apparatus for providing subscription on demand services for an interactive information distribution system. LaRocca further discloses that the communication system includes a back channel transmitter (figure 2, block 208, column 6 line 57 to column 7 line 65).

Since the system of Hiett is about an onboard entertainment system with user interactive control; and since LaRocca is also deals with an interactive information distribution system, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use, within the interactive onboard entertainment system of Hiett, the back channel transmitter, as taught by LaRocca in order for a user

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to interactively send control command(s) to the system to obtain the desired information such as which program (channel) to watch.

Regarding **claim 15**, since the system of Hiatt is about an onboard entertainment system with user interactive control using the internet connection from the mobile platform to a terrestrial receiver (figures 3-5 of Hiatt); and since LaRocca also deals with an interactive information distribution system including and the back channel transmitter (figure 2 of LaRocca) for the interactive commands. It would have been obvious to use the interactive system of Hiatt to send commands to the internet via the terrestrial receiver utilizing the interactive system with back channel transmitter of LaRocca.

Allowable Subject Matter

3. **Claims 18-28** are allowed following the remarks presented by Applicant filed 12/19/03 (paper number 7) pages 9-12.

End of prior Office Action

(11) Response to Argument

Appellant's arguments filed 09/08/2004 have been fully considered but they are not persuasive.

In response to Appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a very low range direct broadcast receiver or providing Internet data to the computer network via the direct broadcast receiver from a distance of less than a few meter") are not recited in the rejected claim 1. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On page 8 in the Rejections section of the brief, Appellant attempts to overcome the Hiett reference by suggesting that "...Hiett does not recite a very low range direct broadcast receiver or providing Internet data to the computer network via the direct broadcast receiver from a distance of less than a few meter ..." .

However, since the claim merely specifies "...a very low range receiver..." and does not specify how close the receiver must be from the transmitter. The term "low range" is interpreted by the Examiner as being a relative short range communication system. And since Hiett's invention is for a communication system including a short range system such as infrared signals (column 9 lines 28-31, "infrared signals", previously cited) which traditionally operates over a very short range, a reasonable interpretation of the claimed limitation "a very short range receiver" would appear to be met by Hiett's communication system.

Therefore, the Examiner is not persuaded by the Appellant's arguments suggesting that the Hiett reference does not meet all limitations.

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In response to Appellant's argument that Hiett does not disclose the subject matter recited in claim 8, claim 8 recites "providing Internet data to the computer network on the mobile platform via the direct broadcast receiver from a distance of less than a few meter." It is noted that this is the method claim as opposed to the apparatus claim of claim 1 with the added limitation "...distance of less than a few meter...".

In this case, Appellant attempts to overcome the Hiett reference by suggesting that: "...Hiett does not show, describe or suggest short range transceivers as defined by the Applicant. Receiver 106 in Hiett is not disclosed as being a very short range receiver. Indeed, the only range discussed is a 1,000 foot range associated with a wireless LAN. See Hiett, col. 9, lines 23-26. The 1,000 foot range is significantly greater than the ranges recited in claims 1 and 8. The communication types, including infrared signals, may potentially be received from a significant distance, more particularly from greater than a few meters..." (page 9, middle paragraph).

However, the Examiner notes that Hiett actually recites in the specified passage that the communication link is "within 1,000 feet" which the Examiner interprets as anywhere from zero ("0") to one thousand ("1,000") feet and includes communication at a very short distance of less than a few meters, and since the claim is an open ended claim: "...A method of providing Internet service to a mobile platform, the mobile platform including a direct broadcast receiver located on the mobile platform and computer network including at least one terminal on the mobile platform the method comprising: providing Internet data to the computer network on the mobile platform..." (claim 8), it does not preclude operation at distances greater than a very low range, the

Examiner still believes that there is no reason(s) why Hiett's invention would not function in such a low range particularly in any ranges of less than 1,000 feet, and definitely in a range of less than a few meters. It is further noted that the 1,000 foot range LAN is one of the embodiments in Hiett's invention and the Examiner has repeatedly cited col. 9, lines 28-31 for other embodiments including the "infra-red signals" which traditionally operates at a very low range. The term "distance of less than a few meters" is interpreted by the Examiner as being a relative short range communication system. And since Hiett's invention is for a communication system including a short range system such as infrared signals, a reasonable interpretation of the claimed limitation would appear to be met by Hiett's communication system.

Therefore, the Examiner is not persuaded by the Appellant's arguments suggesting that the Hiett reference does not meet all limitations.

In response to applicant's argument that the LaRocca reference is not properly combinable with the other references made of record by the Examiner, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, the Applicant attempts to overcome the LaRocca reference by suggesting that the LaRocca reference is not combinable with the other references made of record by the Examiner because "...LaRocca et al. does not describe providing

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Internet data to a computer network on a mobile platform via the direct broadcast receiver from a distance of less than a few meters...".

The LaRocca's reference, however, was relied upon for the teaching of a method and apparatus for providing subscription on demand services for an interactive information distribution system which uses a back channel transmitter, as discussed in a previous Office action. Since the system of Hiatt is about an onboard entertainment system with user interactive control using the internet connection from the mobile platform to a terrestrial receiver (figures 3-5 of Hiatt); and since LaRocca also deals with an interactive information distribution system including and the back channel transmitter (figure 2 of LaRocca) for the interactive commands, it would appear that LaRocca's teaching regarding the advantages of using the back channel transmitter are relevant and pertinent to the present application. Furthermore, that the LaRocca's reference also discloses a method and apparatus for providing subscription on demand services (as noted by the Appellant) does not diminish the relevance of the LaRocca reference to provide the teaching relied upon by the Examiner, since the Appellant's claims are in open-ended form.

Hence, the Examiner is not persuaded by the Appellant's arguments suggesting that the LaRocca reference cannot be properly combined with the other references made of record by the Examiner.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Appeal conference held on: 10/19/2004

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